



1 ENERGY AND ENVIRONMENT CABINET

2 Department for Natural Resources

3 Division of Conservation

4 (Amendment)

5 416 KAR 1:010. Administration of Kentucky Soil Erosion and Water Quality Cost-share Fund.

6 RELATES TO: KRS 146.080- 146.115~~[146.121]~~, 224.71-100-224.71-140, KRS 262.010 –
7 262.660 ~~[Chapter 262]~~

8 STATUTORY AUTHORITY: KRS 146.110-146.115~~[146.121]~~

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.110 to 146.115~~[146.121]~~

10 authorize the Soil and Water Conservation Commission to promulgate administrative regulations
11 governing administration of the Kentucky Soil Erosion and Water Quality Cost-share Fund. The
12 fund provides cost-share assistance to persons engaged in agricultural and silvicultural production
13 for implementation of best management practices for such purposes as providing cleaner water
14 through the reduction in the loading of sediment, nutrients, and pesticides in Kentucky streams,
15 rivers, and lakes; and reducing the loss of topsoil vital to the sustained production of food and fiber;
16 and preventing surface water and groundwater pollution. This administrative regulation establishes
17 criteria for participation in that cost-share program.

18 Section 1. Definitions. (1) "Agricultural or silvicultural production" means any farm
19 operation on a tract of land, including all income-producing improvements and farm dwellings,
20 together with other farm buildings and structures incident to the operation and maintenance of the

1 farm, used for the production of livestock, livestock products, poultry, poultry products, milk, milk
2 products, or silviculture products, or for the growing of crops such as, but not limited to, tobacco,
3 corn, soybeans, small grains, fruit and vegetables; or devoted to and meeting the requirements and
4 qualifications for payments to agriculture programs under an agreement with the state or federal
5 government.

6 (2) "Agriculture water quality plan" is defined by KRS 224.71-100(10)[~~means a document~~
7 ~~incorporating the conservation plan, compliance plan, or forest stewardship management plan as~~
8 ~~necessary to prevent groundwater and surface water pollution from an agricultural or silvicultural~~
9 ~~production~~].

10 (3) "Animal waste" means feces, urine or other excrement, digestive emission, urea or similar
11 substance emitted by animals (including any form of livestock, poultry or fish). This includes animal
12 waste that is mixed or commingled with bedding, compost, feed, soil, or any other material typically
13 found with this waste.

14 (4) "Applicant" means a person who applies for cost-share assistance from the Kentucky Soil
15 Erosion and Water Quality Cost-share Fund.

16 (5)[(4)] "Available funds" means moneys budgeted, unobligated and approved by the
17 commission for cost-share assistance.

18 (6)[(5)] "Best management practices" means, for agricultural or silvicultural production, the
19 most effective, practical, and economical means of reducing and preventing water pollution provided
20 by the United States Department of Agriculture Natural Resources Conservation Service and the
21 Soil and Water Conservation Commission. [~~Best management practices shall establish a minimum~~
22 ~~level of acceptable quality for planning, siting, designing, installing, operating, and maintaining these~~
23 ~~practices.~~]

1 (7)~~(6)~~ "Case file" means the collection of materials that are assembled and maintained for
2 each application for cost-share assistance.

3 ~~[(7) "Compliance plan" means a conservation plan containing best management practices~~
4 ~~developed for persons engaged in agricultural production by the United States Department of~~
5 ~~Agriculture Natural Resources Conservation Service in conjunction with local conservation districts~~
6 ~~as required for eligibility under the Federal Food Security Act.]~~

7 (8) "Conservation district" or "district" is defined by KRS 262.010(3) ~~[means a subdivision~~
8 ~~of state government organized pursuant to KRS Chapter 262 for the specific purpose of assisting~~
9 ~~persons engaged in agricultural or silvicultural production and land users in solving soil and water~~
10 ~~resources problems, setting priorities for conservation work to be accomplished, and coordinating~~
11 ~~the federal, state, and local resources to carry out these programs.~~

12 ~~(9) "Conservation plan" means a plan describing best land management practices, including~~
13 ~~an installation schedule and maintenance program, which when completely implemented, will~~
14 ~~improve and maintain soil, water, and related plant and animal resources of the land in accordance~~
15 ~~with the Natural Resources Conservation Service Technical Guide or developed by others in~~
16 ~~accordance with the Natural Resources Conservation Service Technical Guide and in cooperation~~
17 ~~with a conservation district.]~~

18 (9)~~(40)~~ "Cost-share assistance" means cost-share funds awarded by the commission from
19 the Kentucky Soil Erosion and Water Quality Cost-share Fund.

20 (10)~~(44)~~ "District supervisor" means a member of the governing board of a conservation
21 district.

22 ~~[(12) "Ecosystem-based assistance process" means a specific application of a planning~~
23 ~~process that considers the integration of ecological, economic, and social factors to maintain and to~~

1 enhance the quality of the environment to best meet current and future needs, which may include the
2 following components:

3 (a) ~~Inclusion of private land and public land within the watershed;~~

4 (b) ~~Identification of and suggested solutions for various resource problems within the~~
5 ~~watershed;~~

6 (c) ~~Establishment of opportunities for public participation in plan development and~~
7 ~~implementation;~~

8 (d) ~~Inclusion of mechanisms for developing a comprehensive resource plan for the watershed~~
9 ~~and for reporting conservation accomplishments within the watershed;~~

10 (e) ~~Identification and prioritization of local resource concerns, and inclusion of mechanisms~~
11 ~~to address these concerns within the watershed; and~~

12 (f) ~~Development within current county conservation district boundaries with coordination of~~
13 ~~plans across county lines for protection of the watershed.]~~

14 (11)[(13)] "Eligible land" means land on which agricultural or silvicultural production is
15 being conducted.

16 [(14)] "Eligible person" means a person eligible to apply for cost share assistance.

17 (15) "Eligible practices" means those best management practices that have been approved by
18 the commission.

19 (16) "Forest stewardship management plan" means a plan developed by the Environmental
20 and Public Protection Cabinet's Division of Forestry or other cooperating entities which establishes
21 practices for a person engaged in an agricultural or silvicultural production to manage forest lands
22 in accordance with sound silvicultural and natural resource principles.]

1 (12)~~(17)~~ "Groundwater" means subsurface water occurring in the zone of saturation
2 beneath the water table and any perched water zones below the B soil horizon.

3 (13)~~(18)~~ "Obligated funds" means moneys from a district's portion of the Kentucky Soil
4 Erosion and Water Quality Cost-share Fund allocated by the commission and committed to an
5 applicant after final approval of the application for cost-share assistance.

6 (14)~~(19)~~ "Performance and maintenance agreement" means a written agreement between
7 an eligible person and the district in which the eligible person agrees to implement and to maintain
8 the best management practices for which cost-share assistance is being awarded.

9 (15)~~(20)~~ "Program year" means the period from July 1 to June 30.

10 (16)~~(21)~~ "Soil and Water Conservation Commission" or "commission" means the
11 commission established by KRS 146.090.

12 (17)~~(22)~~ "Surface water" means those waters having well-defined banks and beds, either
13 constantly or intermittently flowing; lakes and impounded waters, marshes and wetlands; and any
14 subterranean waters flowing in well-defined channels and having a demonstrable hydrologic
15 connection with the surface. Effluent ditches and lagoons used for waste treatment which are situated
16 on property owned, leased, or under valid easement by a permitted discharger shall not be considered
17 to be surface waters of the Commonwealth.

18 (18)~~(23)~~ "Water priority protection region" means an area specifically delineated where
19 water pollution from agricultural or silvicultural production has been scientifically documented.

20 (19)~~(24)~~ "Watershed" means all the area from which all drainage passes a given point
21 downstream.

1 Section 2. Eligibility of Persons. (1) Eligible persons. Persons conducting agricultural or
2 silvicultural production are eligible to receive cost-share assistance for best management practices if
3 the following conditions are met:

4 (a) The person has [had] prepared [~~a conservation plan, a compliance plan, a forest~~
5 ~~management or forest stewardship plan, or~~] an agriculture water quality plan; and

6 (b) The person agrees to perform and to maintain best management practices for the period
7 of time specified by the commission.

8 (2) Ineligible persons. A person engaged in agricultural or silvicultural production shall not
9 be eligible for further cost-share assistance if the applicant has: [~~who has~~]

10 (a) Failed or refused to comply with agriculture water quality planning requirements and has
11 been deemed a "bad actor" pursuant to [~~under~~] KRS 224.71-130; or

12 (b) Failed to comply with practice lifespans or complete previous cost-share projects within
13 five (5) years prior to the application date. [~~shall lose eligibility for further cost-share assistance.~~]

14 Section 3. Eligible Best Management Practices. (1) Purposes of best management practices.
15 The Kentucky Soil Erosion and Water Quality Cost-share Funds shall be used to provide cost-share
16 assistance for development and implementation of best management practices for the following
17 purposes:

18 (a) Providing cleaner water through the reduction in sediment loading of Kentucky streams,
19 rivers, and lakes;

20 (b) Reducing the loss of topsoil vital to sustain production of food and fiber; and

21 (c) Preventing surface water and groundwater pollution.

22 (2) Approved best management practices. Complete listings of eligible best management
23 practices are contained in the document titled "The 2019 Kentucky Soil and Water Quality Cost-

Share Practice Handbook". [entitled "Kentucky Soil Erosion and Water Quality Cost-share Manual",
incorporated by reference in Section 13 of this administrative regulation.

~~(3) A district may request the commission's approval of best management practices not
included in the commission's list of approved practices if those best management practices solve a
problem unique to the requesting district and conform to one or more of the purposes listed in
subsection (1) of this section. A request shall be filed in writing with the commission in time for the
commission to review the request and to notify the district of its decision prior to the advertisement
of the program for the next program year. Conservation practices may be included in a district's list
of eligible practices offered for cost-share assistance only if approved by the commission in
accordance with this subsection.]~~

Section 4. Solicitation of Applications. The commission shall establish for each program year
a deadline for submittal of applications for cost-share assistance. Each conservation district shall
provide an opportunity for persons within the district to submit applications in time for the next
program year by advertising the availability of cost-share assistance in appropriate news media, such
as electronic media, local newspapers, local radio stations, and any newsletters published by the
district.

Section 5. Contents and Completion of Applications. (1) Contents of application. An
applicant shall submit to the conservation district in which the eligible land is located an [the]
application [~~incorporated by reference in Section 13 of this administrative regulation~~] in order to
apply for cost-share assistance. The applicant shall include with [~~append to~~] the application:

(a) An [~~Any conservation plan, compliance plan, forest stewardship plan, or~~] agriculture
water quality plan in effect for the eligible land that is compliant with KRS 224.71-120 and updated
to be current with the Statewide Agriculture Water Quality Plan authorized by KRS 224.71-110; and

1 (b) If known to the applicant or as made in consultation with the appropriate technical
2 agency, the anticipated total cost of the best management practice to be implemented and the
3 percentage, if any, of the cost which the applicant proposes to bear, which percentage shall not be
4 less than minimums established by the commission for the particular best management practice.

5 (2) An applicant that is applying for cost-share funds for best management practices
6 involving nutrient storage shall include a nutrient management plan as detailed in the Statewide
7 Agriculture Water Quality Plan.

8 (3) Completion of applications. An applicant who does not have an [~~a conservation plan,~~
9 ~~compliance plan, forest stewardship plan, or~~] agriculture water quality plan in effect for the eligible
10 land that is compliant with KRS 224.71-120 and updated to be current with the Statewide Agriculture
11 Water Quality Plan authorized by KRS 224.71-110; or who has not determined the anticipated total
12 cost of the requested best management practice may request technical assistance from the
13 conservation district in developing a best management practices plan and determining costs. When
14 the best management practices plan has been developed and the anticipated total cost determined,
15 the application will be reviewed in accordance with the eligibility and prioritization criteria
16 established by this administrative regulation.

17 Section 6. Review of Applications. Each conservation district shall review and determine the
18 eligibility of all applications which were submitted to the district by the established deadline. The
19 board of supervisors for the district shall vote upon eligibility at a meeting conducted in accordance
20 with the Open Meetings Law, KRS 61.805 to 61.850, and record the outcome in the minutes of the
21 board of supervisors for that meeting. A district supervisor who is also an applicant for cost-share
22 assistance shall not vote on eligibility. The district shall forward the applications to the commission
23 within fifteen (15) days after determining eligibility. [~~A district may submit both individual~~

1 ~~applications for eligible lands within the district and watershed-based applications for eligible lands~~
2 ~~within the district.]~~

3 Section 7. Prioritization of Applications. The commission shall prioritize the applications of
4 persons determined by the conservation districts to be eligible for cost-share assistance and shall
5 make the final award of cost-share assistance.

6 (1) Classification of priorities. Applications shall be prioritized based on the following
7 criteria:

8 (a) Applicants conducting agricultural or silvicultural production needing animal waste
9 management systems where animal waste has been identified by the Energy and Environment
10 ~~[Environmental and Public Protection]~~ Cabinet as a water pollution problem; and

11 (b) Applicants who are members of agricultural districts[~~;~~and

12 ~~(c) Applicants who have implemented a conservation plan, a compliance plan, an agriculture~~
13 ~~water quality plan, or a forest stewardship plan, and are part of a watershed where the ecosystem~~
14 ~~based assistance process is ongoing].~~

15 (2) Applications within each classification identified in subsection (1) of this section shall be
16 prioritized based on the following criteria:

17 (a) Presence of water pollution, based on:

18 1. Notification by a local, state or federal agency that the applicant's agricultural or
19 silvicultural production has caused or contributed to water pollution;

20 2. Determination of the Energy and Environment ~~[Environmental and Public Protection]~~
21 Cabinet that a surface water affected by the applicant's agricultural or silvicultural production is not
22 meeting its designated use;

1 3. Identification by the Energy and Environment [~~Environmental and Public Protection~~]
2 Cabinet of a water priority protection region encompassing the location of the applicant's agricultural
3 or silvicultural production; and

4 4. Other documentation of water pollution, such as through a biological assessment; or

5 5. Potential for development of water pollution from agricultural or silvicultural production
6 in the watershed in which the applicant's agricultural or silvicultural production is being conducted.

7 (b) Types of water pollutants, based on:

8 1. Animal waste;

9 2. Sediment run-off;

10 3. Nutrient loading; or

11 4. Pesticide application, storage or disposal.

12 (c) Proximity of pollutant to groundwater or surface water;

13 (d) Magnitude of water pollution; and

14 (e) Location in a priority watershed as identified by the Agriculture Water Quality Authority or
15 Division of Water including a source water protection area. [~~designated water quality planning area,~~
16 ~~based on the existence of:~~

17 1. ~~An ecosystem-based assistance process;~~

18 2. ~~A Federal Clean Water Act Section 319 demonstration area;~~

19 3. ~~A wellhead protection area; or~~

20 4. ~~An agriculture water priority protection region.]~~

21 Section 8. Allocation of Cost-share Assistance. (1) The available funds received by the
22 commission for the cost-share program shall be held by the Kentucky Division of Conservation and
23 disbursed to the conservation districts based on requests from the districts approved by the

1 commission after a practice has been completed and all paperwork has been signed as complete and
2 submitted for payment. ~~[allocated to the conservation districts based on requests from districts~~
3 ~~approved by the commission prior to each program year.]~~ The district shall be granted ~~[receive]~~ a
4 share of the Kentucky Soil Erosion and Water Quality Cost-share Fund that shall be held by the
5 Kentucky Division of Conservation based on the commission's approval of an initial district request
6 based on the objectives identified in Section 8 of this administrative regulation, and in accordance
7 with the prioritization system established in Section 7 of this administrative regulation.

8 (2) Any funds granted ~~[allocated]~~ by the commission and distributed by the Kentucky
9 Division of Conservation to a district for a practice that results in overpayment ~~[program year]~~ shall
10 revert to the commission if the district has not received prior permission to obligate the funds to
11 another applicant ~~[obligated the funds]~~ within one (1) year from receipt ~~[allocation]~~.

12 (3) The commission shall retain ten (10) percent of the annual appropriation ~~[available funds]~~
13 in a contingency fund to be allocated to assist persons engaged in agricultural or silvicultural
14 productions and implementing the agriculture water quality program mandated by Subchapter 71 of
15 KRS Chapter 224~~[KRS 224.71]~~.

16 Section 9. Design of Best Management Practices. Once cost-share assistance has been
17 awarded by the commission, the local district shall designate a technician to develop final design
18 and layout for the approved best management practices.

19 Section 10. Execution of Performance and Maintenance Agreements. After an application
20 has been awarded cost-share assistance and before the applicant has received ~~[receives]~~ payment of
21 the cost-share funds, the applicant and the conservation district shall execute a performance and
22 maintenance agreement.

1 (1) Requirements of performance and maintenance agreements. The performance and
2 maintenance agreement shall require the applicant to meet the following requirements:

3 (a) The applicant shall agree to perform those best management practices approved in
4 accordance with this administrative regulation;

5 (b) The applicant shall agree to maintain approved best management practices for the
6 expected life of each practice agreed upon in the performance and maintenance agreement;

7 (c) Upon completion of the approved best management practice the applicant shall notify the
8 district that the practice has been installed and shall provide to the district for its inspection all
9 vouchers, bills, and receipts associated with the practice; and

10 (d) The applicant shall agree that at the time of transfer of ownership of land where a best
11 management practice has been applied using cost-share assistance and the expected life assigned the
12 practice has not expired, the applicant shall execute a contract with the transferee requiring
13 continuation of those practices until completed;

14 ~~[(e) The applicant shall agree that if the applicant destroys the best management practice~~
15 ~~installed or voluntarily relinquishes control or title to the land on which the installed practice has~~
16 ~~been established and the new owner, heir, or operator does not agree in writing to properly maintain~~
17 ~~the practice for the remainder of its specified lifespan, the applicant shall refund all or part of the~~
18 ~~cost-share assistance, as determined by the district; and~~

19 ~~(f) The applicant shall agree that if the applicant does not maintain the approved best~~
20 ~~management practices on the schedule provided in the plan the applicant shall forfeit the cost share~~
21 ~~assistance, and the commission shall be authorized to recover the funds disbursed.]~~

22 (2) Effect of performance and maintenance agreement. Requirements for performance and
23 maintenance of best management practices applied using cost-share assistance shall be established

1 in the performance and maintenance agreement and reviewed with the applicant at the time of
2 application submittal and before completion of a certification of practices.

3 (3) Refund of funds disbursed. (a) The district shall [may] require a refund of cost-share
4 assistance funds if the district determines: [when]

5 1. An approved best management practice has not been [performed or] maintained in
6 compliance with approved design standards and specifications for the practice during its expected
7 life as agreed in the performance and maintenance agreement; or[-]

8 2. a. The applicant voluntarily relinquishes control or title to the land on which the best
9 management practice that was installed using cost-share funds and the new owner, heir, or operator
10 does not agree in writing to properly maintain the practice for the remainder of its specified lifespan.

11 b. If the applicant voluntarily relinquishes control or title to the land on which the best
12 management practice that was installed using cost-share funds pursuant to clause a. of this
13 subparagraph, then the applicant shall only be responsible for refunding to the district the amount of
14 funds prorated on the number of years remaining in the best management practice maintenance
15 agreement.

16 (b) 1. If the district determines that the applicant shall refund the amount of the cost-share,
17 the applicant shall have thirty (30) days to make payment to the district. The district may grant the
18 applicant an extension of time to make the refund upon the submission of a written request by the
19 applicant.

20 2. If the applicant fails to timely refund the amount of the cost-share, the district shall refer
21 the matter to the commission.

1 3. If the district declines to seek a refund, the district shall state its reason for not doing so
2 and notify the commission and the applicant. The commission may review the matter to determine
3 whether to seek a refund.

4 4. If the commission becomes aware of a situation described in subparagraphs (3)(a)1. or
5 (3)(a)2., and the district fails to review the matter, the commission shall conduct a review of the
6 matter and determine whether to seek a refund.

7 5. The commission shall be authorized to recover the amount of the cost-share by initiating
8 a legal action in the Franklin Circuit Court.

9 (4) Application for future cost-share assistance. Best management practices that have been
10 successfully completed and which later fail as the result of floods, drought, or other natural disasters,
11 and not the fault of the applicant, shall not prohibit the applicant from applying for additional cost-
12 share assistance to restore the practices to their original design standards and specifications.

13 (5) Certification. Upon notification by the applicant that the approved best management
14 practice has been completed and before disbursement of funds from the district, the appropriate
15 technical agency shall certify to the district that the practice has been installed in accordance with
16 the document titled "The 2019 Kentucky Soil and Water Quality Cost-Share Practice Handbook".
17 ~~[entitled "Kentucky Soil Erosion and Water Quality Cost-share Manual," incorporated by reference~~
18 ~~in Section 13 of this administrative regulation.]~~

19 (6) Limitations on awards. Cost-share assistance awarded to an applicant shall be limited to
20 a maximum of seventy-five (75) percent of the actual cost, not to exceed an amount approved by the
21 commission, for each best management practice, with the assisted applicant providing twenty-five
22 (25) percent of the cost, which may include in-kind support, with a maximum of ~~[\$7,500 per year to~~
23 ~~each applicant for all practices except for the more expensive animal waste storage practices which~~

1 ~~have a maximum of~~ \$20,000 per year ~~[for each applicant]~~. An applicant shall only submit one
2 application per program year. Cost-share assistance may be used with federal or local cost-share
3 funds on the same practices as long as the total cost share payment does not exceed seventy-five (75)
4 percent of the practice cost. Cost-share assistance shall not be awarded to best management practices
5 in progress prior to cost-share approval or previously-installed practices by the applicant.

6 Section 11. Reporting and Accounting. (1) District reporting and accounting. A district shall
7 conduct the following reporting and accounting procedures:

8 (a) Maintain a control ledger showing the current approved applications ~~[request]~~ to the
9 commission and cost share approved amounts ~~[funds obligated]~~ for approved applications, based on
10 estimated cost;

11 (b) Submit a quarterly report to the commission indicating any ~~[the]~~ unobligated balance of
12 allocated and disbursed cost-share funds as shown on each ledger;

13 (c) Submit an annual progress report to the commission showing accomplishments "to date"
14 for the current program year; and

15 (d) Assemble case files for each approved application, filed by program year and accessible
16 for public inspection, containing:

- 17 1. The approved application for allocated funds;
- 18 2. A copy of the estimated cost sheet;
- 19 3. Certification of practice completion;
- 20 4. Applicant's vouchers, bills or receipts;
- 21 5. Final designs for best management practices;
- 22 6. The performance and maintenance agreement;
- 23 7. Any amendments to the performance and maintenance agreement; and

1 8. A map locating the practices.

2 ~~[(2) Commission reporting and accounting. The commission shall conduct the following~~
3 ~~reporting and accounting procedures:~~

4 ~~(a) Receive and maintain reports from districts showing the unobligated balance of allocated~~
5 ~~and disbursed cost share funds as shown on each ledger; and~~

6 ~~(b) Submit consolidated quarterly reports based on the reports from districts on the~~
7 ~~unobligated balance of the Kentucky Soil Erosion and Water Quality Cost share Fund.]~~

8 Section 12. Appeals. (1) Procedure for filing appeal. An applicant aggrieved by a decision of
9 the commission denying an application or limiting the amount of financial assurance may file a
10 written appeal with the commission within thirty (30) days of the decision and shall set forth the
11 basis for the appeal.

12 (2) Procedure for hearing appeal. The commission shall notify the applicant and the local
13 district that they may appear before the commission and present testimony or written documentation
14 on the issues presented by the appeal. The commission shall have sixty (60) days in which to make
15 a decision and to notify the local district and the applicant.

16 (3) Review of final decision. The decisions of the commission may be appealed to the
17 Franklin Circuit Court.

18 Section 13. Incorporation by Reference. (1) "The 2019 Kentucky Soil and Water Quality
19 Cost-Share Practice Handbook ", October 2019 is incorporated by reference.

20 (2) This material may be inspected, copied, or obtained, subject to applicable copyright law,
21 at the Division of Conservation, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through
22 Friday, 8 a.m. to 4:30 p.m., Eastern Standard Time.

1 ~~[The documents entitled "Kentucky Soil Erosion and Water Quality Cost-share Manual",~~
2 ~~dated March 1, 1995 is hereby incorporated by reference. It is available for public inspection and~~
3 ~~copying, subject to copyright law, at the office of the Soil and Water Conservation Commission, 691~~
4 ~~Teton Trail, Frankfort, Kentucky, between the hours of 8 a.m. and 4:30 p.m., Mondays through~~
5 ~~Fridays, excluding state holidays.]~~

416 KAR 1:010 approved for filing.
Pages (1-16)

12/4/2019

Date

Charles G. Snavely
Charles G. Snavely, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 25, 2020 at 5:00 P.M. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through February 29, 2020. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone: (502) 782-6720, fax: (502) 564-4245, email: michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation No.: 416 KAR 1:010
Contact Person: Michael Mullins

Contact number: (502) 782-6720
Email: michael.mullins@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes criteria for participation in the Kentucky Soil Erosion and Water Quality cost-share program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the criteria for participation in the cost share program and to also establish other program requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 146.110 to 146.115 authorize the Soil and Water Conservation Commission to promulgate administrative regulations governing administration of the Kentucky Soil Erosion and Water Quality Cost-share Fund. This administrative regulation establishes those requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements for the applicants for cost-share funds.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment increases the maximum amount of cost-share funds that can be received by an applicant from \$7,500 to \$20,000. The amendments also updates methods in the administrative regulation that are no longer used by the Division in the management of cost-share funds.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to change the maximum amount of cost-share funds an applicant can receive and to amend the procedures in the administrative regulation to more closely match current practice.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by changing the maximum amount of cost-share funds an applicant can receive and to amend the procedures in the administrative regulation to more closely match current practices.

(d) How the amendment will assist in the effective administration of the statutes: The statutes provide the agency the authority to offer cost-share assistance to persons engaged in

agricultural and silvicultural production for implementation of best management practices for such purposes as providing cleaner water. These amendments assist in this goal by increasing the maximum amount of funds that can be disbursed to an applicant.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 121 conservation districts in the Commonwealth. In FY18 and FY19 an average of 1812 farmers applied for cost-share grants. In FY18 \$8,904,428 in funds were awarded and \$8,475,983.62 in FY19.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will be required to follow slightly different application procedures and will be required to refund cost-share funds if they fail to meet the requirements of the project design or maintenance requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendments to the administrative regulation will not cost the entities in question (3) any additional funds.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in Question #3 will now have the ability to receive a maximum of \$20,000 instead of \$7,500.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be no costs to the administrative body with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the administrative body with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The amendments to this administrative regulation will not require an increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? (Explain why or why not) No. All entities that apply for cost-share funds are eligible to receive funds depending on availability of funds and the project proposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation No.: 416 KAR 1:010

Contact Person: Michael Mullins

Contact number: (502) 782-6720

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1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Conservation and local conservation districts.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.110-146.115.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

SUMMARY OF MATERIAL INCORPORATED BY REFERENCE
416 KAR 1:010

This administrative regulation incorporates the following documents:

I. The 2019 Kentucky Soil and Water Quality Cost-Share Practice Handbook " (October 2019). This handbook will be used by entities interested in applying for cost-share funds to complete an application for those funds. This is a new document and consists of 29 pages.